



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

July 9, 2004

Mr. Allan Heese
Manager, Juneau International Airport
1873 Shell Simmons Drive
Juneau, Alaska 99801

Dear Mr. Heese:

The National Marine Fisheries Service (NMFS) received a copy of your June 4, 2004 memorandum to the Airport Board regarding transferring land within the Mendenhall Wetlands State Game Refuge to the airport. NMFS is a cooperating agency for the development of the Environmental Impact Statement (EIS) for the airport safety and runway improvements. We have been working with the Federal Aviation Administration (FAA) to develop alternatives that achieve safety improvements while minimizing harm to living marine resources and their habitats.

The Mendenhall Wetlands have high ecological value and provide important habitat for marine mammals, fish, and prey species. NMFS is required by statute to assess the potential impact of proposed alterations to habitats that support marine mammals and Essential Fish Habitat, and to recommend appropriate conservation measures. NMFS recognizes that the State of Alaska has exclusive jurisdiction over decisions regarding the legal status of lands within state game refuges. However, we are concerned that you may be under the impression that by transferring lands from the refuge, the requirements for minimizing and mitigating the impacts of proposed airport changes will be reduced; particularly the requirements of Section 4(f) of the Department of Transportation Act, as amended (49 USC 303).

In the December 2002 Preliminary Draft EIS, the FAA determined that the Mendenhall Wetlands State Game Refuge met the definition of a "public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance" under Section 4(f). Section 4(f) provides that areas with this status may not be approved for use in transportation projects unless:

1. There is no prudent and feasible alternative to using that land; and
2. The program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.

Furthermore, the Department of Transportation's policy on Section 4(f) prohibits changes to land status undertaken to avoid the application of Section 4(f). The policy specifically states:

Where the use of a property is changed by a state or local agency from a Section 4(f) type use to a transportation use in anticipation of a request for approval, section 4(f) shall consider to apply even though the change in use may have taken place prior to the request for approval or prior to any FAA action on the matter. This is especially true where the change in use appears to have been undertaken in an effort to avoid the application of Section 4(f) (Airport Environmental Handbook, Section 7(a)(4)).



Your memorandum appears to indicate that the above section applies unless the lands involved in the transfer are determined not to be of national, state, or local significance by the State.

However, Section 7(a)(1) of the policy states:

Any part of a publicly owned park, recreation area, refuge or historic site is presumed to be significant unless there is a statement of insignificance relative to the whole park...

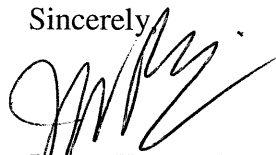
Thus, our reading of the policy suggests that the entire Mendenhall Wetlands State Game Refuge would need to be found not to be a resource of national, state or local significance to effect a change in status under Section 4(f). The Department of Transportation defines significance for the purposes of Section 4(f) as follows:

Significance means that in comparing the availability and function of the recreation, park, or wildlife and waterfowl refuge area with the recreational, park, and refuge objectives of that community, the land in question plays an important role in meeting those objectives.

The FAA decides whether determinations of significance are reasonable. Given the legislative history establishing the Refuge, as well as the large body of scientific information supporting the value of this area to fish and wildlife resources, we doubt that a compelling case can be made for arguing that the entire area is not significant. In our required coordination with FAA under Section 4(f), NMFS would be unable to support such a determination.

We encourage you to work through the EIS process to resolve any issues or concerns you may have regarding the alternatives being proposed for the airport. In our view, the EIS process is the appropriate forum to develop a preferred alternative that balances safety improvements with protection of Essential Fish Habitat and other resources.

Sincerely



James W. Balsiger
Administrator, Alaska Region

cc: Assembly, City and Borough of Juneau
Federal Aviation Administration
U.S. Fish & Wildlife Service
Alaska Department of Natural Resources (OHMP and OPMP)